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Date of Decision: 13-12-95

Special Civil Application No.8056 of 1995

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
- [5. Whether it is to be circulated to the Civil Judge? No

Mr.R.R.Marshall, learned counsel for the petitioner.

Mr.D.A.Bambhania, learned Addl.G.P. for respondent Nos.1,2 and 3.

Mr.K.M.Patel, learned counsel for the respondent No.4.

Coram: (M.R. Calla, J.)

Dt: 13-12-95

ORAL JUDGMENT:

1. This is a petition filed by a person, who had worked as a Peon in Gujarat State Bharat Scouts and Guides Sangh claiming gratuity for the services rendered by him for a period over 26 years from 11-6-65 to 29-1-92 when he retired. It is the dismal fact that although the petitioner, who was a Peon, had retired way back on 29-2-92, he has not been paid due amount of his gratuity

till this date despite his repeated requests.

2. When the matter came up before this Court on 25-9-95 a notice was issued to the respondents as to why this petition may not be admitted and disposed of at admission stage and the notice was made returnable. On behalf of the respondent No.4, an affidavit-in-reply dated 6-12-95 has been filed, but no return whatsoever has been filed on behalf of the respondent Nos.1 to 3 so far despite the repeated opportunities being granted by this Court and it is rather unfortunate that even today Mr.Bambhanja is asking for time to file a reply. In the facts and circumstances of this case, when the notice had been issued as to why the petition should not be taken up for final disposal at admission stage, I do not consider it appropriate to grant any further time. However, Mr.Bambhanja has been permitted to make all submissions, which he could have made in the return.

3. Rule. Mr.D.A.Bambhanja, learned Addl.G.P. waives service of rule on behalf of respondents Nos.1 to 3 and Mr.K.M.Patel, learned counsel, waives service of rule on behalf of respondent No.4.

4. As per pleadings the following facts are undisputed /uncontroverted:

1. That the petitioner had served the Gujarat State Bharat Scouts and Guides Sangh for a period over 26 years from 11-6-65 to 29-2-92.
2. There were more than 18 employees working with respondent No.4 and since 1988, there are more than 20 employees. The petitioner is, therefore, entitled to the gratuity for the services rendered by him and the respondents are liable to pay the same.
3. The due amount of gratuity comes out to be Rs.22,867/-.
4. The respondent No.4 is an Institution over which the State Government has all pervasive control and the respondent Nos.1 to 3 have been paying 100% grant to the respondent No.4.
5. The staff strength and service conditions of respondent No.4 are duly sanctioned by the respondent Nos.1 to 3.
6. The State Government has been paying gratuity to

the employees of all other grant-in-aid Institutions like respondent No.4 such as Physical Education Colleges, Fine Arts and Art Teachers Diploma Colleges, Primary, Secondary and Higher Secondary Schools as well as Colleges.

7. In terms of the Government Resolution dated 13-4-88 issued by the Education Department of the Government of Gujarat all the Rules relating to pay scales and other Resolutions and Rules issued by the Government from time to time shall apply to the respondent No.4 mutatis mutandis.

5. Thus, there is no room for doubt with regard to the petitioner's entitlement to the payment of gratuity. The petitioner had made representations by sending letters dated 28-2-82, 29-6-93, 19-7-93 and 24-8-95 and the only reply which has been received by the petitioner is the letter dated 2-9-95 from respondent No.4 wherein it has been stated that according to the Government Resolution dated 13-4-88 the respondent No.4 was of the opinion that the petitioner was entitled to the gratuity and accordingly the case had also been forwarded to the Government, but the Government had replied that the petitioner was not entitled to gratuity. A copy of the letter dated 31-3-93 sent by the Deputy Secretary, Education Department to the Gujarat State Bharat Scouts and Guides Sangh shows that the Government had categorically informed the Gujarat State Bharat Scouts and Guides Sangh that the employees of the Gujarat State Bharat Scouts and Guides Sangh were not entitled to gratuity.

6. Mr.Bambhania, learned Addl. G.P.. has submitted that the Government is not the employer and the petitioner has been the employee of respondent No.4 and the respondent No.4 is obliged to pay the amount of gratuity to the petitioner. It has been further submitted by Mr.Bambhania that the Government Resolution dated 13-4-88 does not mean that the Government has to pay the amount of gratuity. Clause (6) of this Resolution dated 13-4-88 refers to the pay scales only and not any Rule or Resolution regarding gratuity. Mr.K.M.Patel, who has appeared on behalf of respondent No.4, has taken a categorical stand that the respondent No.4 is receiving 100% grant-in-aid from the State Government and the respondent No.4 has negligible income of its own. The registration fees received by the respondent No.4 is required to be remitted to the National Head Quarters and besides registration fees, the respondent No.4 receives subscription fees towards life

member, but there are very few enrolments and the amount received is almost negligible. The life membership fees is Rs.251/- only and the respondent No.4 exclusively depends on the aid and grant given by the State Government for meeting its expenses. The State Government is required to make payment of grant to the respondent No.4 for paying the amount of gratuity to its employees and that is why the application made by the petitioner for payment of gratuity was forwarded by respondent No.4 to the State Government through the respondent Nos.2 and 3. But the State Government has declined the request and accordingly the petitioner was informed vide letter dated 2-9-95 and the respondent No.4 has no objection for the payment of gratuity as claimed by the petitioner, if the same is so approved for grant by the respondent Nos.1 to 3.

7. I have considered the pleadings and have heard learned counsel for the parties. It has to be agreed on all hands that Bharat Scouts and Guides is for all purposes an agency and instrumentality of the Government. It is known to all and sundry that the organization of the Scouts and Guides is an organization, which has been functioning as a part and parcel of the Education Department not only in this State but in several other States of this country. The Government has been discharging its functions either directly or indirectly by creating such autonomous organization and for that purpose 100% grant are being given and so far as the case urged by Mr. Bambhania that the Government Resolution of 1988 does not extend to the cases of payment of gratuity is concerned, in view of the factual averment that all other grant-in-aid Institutions like respondent No.4 are being aided by the Government even for the purpose of payment of gratuity to their employees, it does not stand to reason as to why an exception should be made with regard to the employees of an organization like Bharat Scouts and Guides, which is basically an organization to train the students right from their student life as to how they have to behave like ideal citizens to help any person anywhere in difficulty. Such organizations are meant basically for the welfare of the people and society at large and it can not be gainsaid that the State Government should be absolved of its liability only because the function, which was essentially the function of a welfare State, is now being sought to be discharged by forming a Sangh known as Gujarat State Bharat Scouts and Guides Sangh. It is a case of State activity since the State is functioning these days with a myriad personality. Even while sending the reply on 31-3-93 to the Gujarat State Bharat Scouts and Guides Sangh no Rule

whatsoever has been quoted and a bald communication had been sent that the employees of the Bharat Scouts and Guides are not entitled to the benefits like bonus, pension, gratuity, etc. Once the Government itself has passed a Resolution with regard to the employees of the Bharat Scouts and Guides saying that the Rules with regard to the pay scales and all other Government Resolutions and Circulars issued from time to time shall apply mutatis mutandis to the employees of Bharat Scouts and Guides Sangh and for that purpose no separate orders are required to be issued, it is hardly open for the State Government to now take a somersault and to come with a stand that the Government is not obliged to part with any funds for the purpose of the payment of the gratuity to the employees of Bharat Scouts and Guides Sangh, more particularly when the factual averment made by the petitioner that the employees of other grant-in-aid Institutions like respondent No.4 are being paid gratuity by the State Government is not controverted. It, therefore, remains a matter of technical rather hyper technical matter only to say that the respondent No.4 is the employer and respondent Nos.1 to 3 are not at all concerned with the question of payment of gratuity. The apathy of the State Government towards the employees of the Bharat Scouts and Guides is manifest and as has been reflected in the facts of this case is rather deplorable and instead of coming with an expression of regret for not paying the gratuity for a period of three years, I am simply bemoaned that the Government has come to contest the matter and has sought to contest the just and honest claim of its own citizen, who had worked at a lower strata as a Peon in such a welfare organization. The State is a virtuous litigant and is not supposed to disown and defeat the just and honest claims of its citizens on such grounds, which are rather jejune and not at all germane to the real controversy involved in such cases and in any case it remains a joint and several responsibility of all the four respondents to make the payment of gratuity to the petitioner.

8. The result of the aforesaid adjudication is that this Special Civil Application succeeds and whereas the petitioner has been deprived of the due amount of his gratuity for a period over three years despite his repeated requests, it is also a case in which the exemplary cost must be awarded and the direction be issued for payment of gratuity with interest. Accordingly it is directed that the respondent Nos.1 to 3 shall remit due amount of gratuity claimed by the petitioner to the respondent No.4 with 18% interest

thereon from the date the payment of gratuity became due to the date of the payment and a cost of Rs.5000/-. The directions, as aforesaid, shall be carried out within a period of 30 days from the date the certified copy of this order is produced before the respondents. The Special Civil Application is allowed. Rule is made absolute accordingly. Direct service is permitted.